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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 IAN RAY FINDLAY,

8 Petitioner,

9 v.

10 STATE OF WASHINGTON,

11 Respondent.

NO: 4:19-CV-5124-TOR

ORDER SUMMARILY DISMISSING
HABEAS PETITION

12 Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro*
13 *se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28
14 U.S.C. § 2254. The \$5.00 filing fee has been paid.

15 **PROPER RESPONDENT**

16 An initial defect with the Petition is that it fails to name a proper party as a
17 respondent. The proper respondent in a federal petition seeking habeas corpus relief
18 is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426
19 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the
20 petitioner is incarcerated, the proper respondent is generally the warden of the

1 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d
2 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of
3 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

4 The second defect with the Petition is that it is not signed by Petitioner.
5 Federal Rule of Civil Procedure 11(a) requires every pleading to be signed by the
6 party personally if the party is not represented by an attorney. The court must strike
7 an unsigned paper unless the omission is promptly corrected after being called to the
8 . . . party's attention. *Id.* Here, signing would be futile in any event.

9 EXHAUSTION REQUIREMENT

10 Petitioner challenges his 2018 Benton County convictions for two counts of
11 communication with a minor for immoral purposes, possession of depictions of
12 minor engaged in sexually explicit conduct in the second degree, rape of a child in
13 the third degree, and two violations of a protection order. He was sentenced to 75
14 months incarceration. Petitioner indicates that he did not file a direct appeal. ECF
15 No. 1 at 2. Petitioner claims that he has filed no other petitions, applications or
16 motions concerning this judgment of conviction in any state court. *Id.* at 3.

17 In his grounds for relief, Petitioner argues that the State of Washington has no
18 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-15. It has long
19 been settled that state courts are competent to decide questions arising under the U.S.
20 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) ("It is the duty of the

1 state court, as much as it is that of the federal courts, when the question of the validity
2 of a state statute is necessarily involved, as being in alleged violation of any
3 provision of the federal constitution, to decide that question, and to hold the law void
4 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805
5 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal
6 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments
7 to the contrary lack merit.

8 Additionally, before a federal court may grant habeas relief to a state prisoner,
9 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
10 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
11 a prisoner give the state courts an opportunity to act on his claims before he presents
12 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
13 petitioner has not exhausted a claim for relief so long as the petitioner has a right
14 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. §
15 2254(c).

16 To meet the exhaustion requirement, the petitioner must have “fairly
17 present[ed] his claim in each appropriate state court (including a state supreme court
18 with powers of discretionary review), thereby alerting that court to the federal nature
19 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
20 365–66 (1995). A petitioner fairly presents a claim to the state court by describing

1 the factual or legal bases for that claim and by alerting the state court “to the fact
2 that the . . . [petitioner is] asserting claims under the United States Constitution.”
3 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th
4 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
5 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

6 Furthermore, to fairly present a claim, the petitioner “must give the state
7 courts one full opportunity to resolve any constitutional issues by invoking one
8 complete round of the State’s established appellate review process.” *O’Sullivan*,
9 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
10 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
11 (1971). It does not appear from the face of the Petition or the attached documents
12 that Petitioner has exhausted his state court remedies as to each of his grounds for
13 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state
14 court remedies.

15 **GROUND FOR FEDERAL HABEAS RELIEF**

16 Petitioner asserts that the Washington state constitution contradicts the federal
17 constitution regarding the Fifth Amendment right to “presentment or indictment of
18 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering
19 his arrest, conviction and imprisonment illegal.

1 Petitioner seems to argue that because the state courts have defied “federally
2 established procedures and processes for the adjudication of crimes” only “a court
3 of federal jurisdiction” has jurisdictional authority over his claims. His bald
4 assertion that “due process of the law was ignored” is unsupported by his factual
5 allegations.

6 The United States Supreme Court stated long ago: “Prosecution by
7 information instead of by indictment is provided for by the laws of Washington.
8 This is not a violation of the Federal Constitution.” *See Gaines v. State of*
9 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the
10 contrary presented in his four grounds for federal habeas relief are legally frivolous.

11 Because it plainly appears from the petition that Petitioner is not entitled to
12 relief in this Court, **IT IS ORDERED** the petition, ECF No. 1, is **DISMISSED**
13 pursuant to Rule 4, Rules Governing Section 2254 Cases in the United States District
14 Courts.

15 **IT IS SO ORDERED.**


16 The Clerk of Court is directed to enter this Order, enter judgment, provide
17 copies to Petitioner, and close the file.

18 The Court certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from
19 this decision could not be taken in good faith, and there is no basis upon which to
20

1 issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A
2 certificate of appealability is therefore **DENIED**.

3 DATED May 16, 2019.




THOMAS O. RICE
Chief United States District Judge